

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

EVELYN MCKINLEY, )  
                        )  
Plaintiff,           ) Civil Action No. 04-222E  
                        )  
v.                    ) Honorable Chief Magistrate  
                        ) Judge Susan Paradise Baxter  
R. L. BROWNLEE, Acting )  
Secretary of the Army, ) ELECTRONICALLY FILED  
                        )  
Defendant.           )

**DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

AND NOW, comes the Defendant, R. L. Brownlee, Acting Secretary of the Army, by and through his attorneys, Mary Beth Buchanan, United States Attorney for the Western District of Pennsylvania, and Paul D. Kovac, an Assistant United States Attorney for said district, and pursuant to Fed. R. Civ. P. 56(c), respectfully requests that the Court issue an Order entering summary judgment in his favor on all the claims set forth in Plaintiff's Amended Complaint. In support of this Motion, Defendant states as follows:

1. Plaintiff, Evelyn L. McKinley, initiated this employment discrimination action pursuant to Title VII, 42 U.S.C. § 2000e et seq., and the Rehabilitation Act, 29 U.S.C. § 701 et seq.

2. Specifically, Plaintiff has claimed gender and disability discrimination based upon her alleged mistreatment and termination from her position as a Heavy Mobile Equipment

Repairer at the Army's Equipment Concentration Site ("ECS") in Conneaut Lake, Pennsylvania.

3. As a result, Plaintiff seeks to recover lost wages, lost benefits, compensatory damages, and attorney's fees.

4. The Court should enter summary judgment in favor of Defendant because the evidence presented in this case demonstrates that Plaintiff's claims lack legal merit. Indeed, Plaintiff cannot even establish a prima facie case of gender and disability discrimination, as there is simply no competent evidence to suggest that Plaintiff's termination was based upon these grounds.

5. Even if Plaintiff could establish a prima facie case, Defendant has articulated a legitimate non-discriminatory reason for the Army's termination decision, that is, Plaintiff was unable to perform the duties of her position with or without reasonable accommodations, and there were no other open positions that Plaintiff was qualified to perform. Plaintiff is unable to refute this evidence.

6. In short, the Court should enter summary judgment in favor of Defendant.

7. A Brief in support of this Motion, together with a Statement of Undisputed Material Facts, and Appendix of Exhibits (A-G), are being filed simultaneously herewith, and are incorporated herein by reference.

WHEREFORE, Defendant, R. L. Brownlee, Acting Secretary of the Army, respectfully requests that the Court issue an Order granting summary judgment in his favor and against Plaintiff with regard to her gender and disability claims as set forth in the Amended Complaint.

A proposed Order is attached.

Respectfully submitted,

MARY BETH BUCHANAN  
United States Attorney

s/Paul D. Kovac  
PAUL D. KOVAC  
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Dated: March 13, 2006

Counsel for Defendant

Of Counsel:  
Major Kwasi Hawks  
U.S. Army  
Litigation Attorney

**CERTIFICATE OF SERVICE**

I hereby certify that on March 13, 2006, I have electronically filed and/or served by U.S. mail a copy of **DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** upon the following:

Neal A. Sanders, Esquire  
Counsel for Plaintiff  
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s/Paul D. Kovac  
PAUL D. KOVAC  
Assistant U.S. Attorney